TO THE

HONORABLE,

THE

SENATE AND HOUSE OF REPRESENTATIVES,

OF THE

COMMONWEALTH OF PENNSYLVANIA.

PHILADELPHIA:
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1839.

MEMORIAL.

The Members of the Philadelphia Savings Institution, having understood that an application will be made the present session of the Legislature, on the part of *some of the Stockholders* of the said Institution, praying that they may be allowed the privilege of voting for, and being eligible as, *Directors*, deem it no more than a duty incumbent on them and due to you, to make a statement of all the facts connected with the existence of said Institution, in order that you may the more fully understand and be the better prepared to act on the subject.

The Philadelphia Savings Institution was originally incorporated by an Act of Assembly of this State, passed on the 5th day of April, A. D. 1834. The names of all the incorporators (46 in number) are mentioned in the first section of the Act. Immediately after the names, follows the clause, "and all and every other person or persons hereafter becoming MEMBERS of the Philadelphia Savings Institution." Thus clearly and distinctly organizing the Institution, under the direction and control of *members*, and not at all under the influence or authority of *Stockholders*. So careful was the Legislature to guard and protect the rights and privileges of the *Members*, that, in the whole charter, the word "*Stockholders*" occurs but once. In the 7th Section, it is made the duty of the directors to declare a dividend, and pay the same to the "*Stockholders*, or their legal representatives." In all other cases the word *Members* is used in relation to the government and business of the Institution.

In the year 1836, some difference of opinion existed in the minds of some of the *Members* as to the construction of the charter. Some insisting that no person could be a *Member unless he were the holder of Stock; and others maintaining that Stock had nothing to do with Membership.* The Institution had been in operation for the last two years, and, in the course of that time, the Stock had passed through hundreds of different hands; but

yet, not a single individual to whom Stock had been transferred, during all this time, had the temerity to claim the rights appertaining to a *Member*. If the Charter gave them rights, would they not have insisted on the enjoyment of them? The Stock was purchased by those who were in the habit of dealing in Stocks, and who took good care to know and understand exactly what immunities they were entitled to by the purchase of the Stock of any particular corporation. Yet, notwithstanding all these facts, in 1836 it was boldly asserted and maintained, that *without STOCK, a person could not be a MEMBER!*

For the purpose of having this question finally and conclusively determined, it was brought before the Supreme Court, in Bank of this State, at March term, 1836, and the opinion of the Court was delivered on the 28th of April, 1836. The case is reported at length in 1st Wharton's Reps., 461, and a copy of which report is annexed (for your special reference,) to this memorial. The Court there decided:—

1st. That *Stockholders* were not, as such, *members* of the corporation; consequently that the *Assignee of a Stockholder* did not, by the assignment, become a *Member*.

2d. That persons originally *members* continued to be *such*, although they *never possessed Stock, or had parted with it.*

Rogers J., in delivering the *unanimous* opinion of the Court, observes very justly:—"It is also worthy of remark, that the Legislature wholly omit to regulate the right of voting: *a regulation always introduced in all joint stock incorporations.* It is the uniform policy to *limit the number of votes to which Stockholders* may be entitled, in all such companies; *a limitation which would not have been omitted* had the Legislature conceived this to be an institution of that description."

Throughout the whole opinion you will find that the Court are firmly convinced, and give it as their deliberate and decided judgment, that the Legislature, at the time of granting the Charter, intended that the *Members*, and the *Members* only, should have the whole and sole control and management of the affairs of the Institution, and that, too, without regard to being *holders of Stock.*

Some of the *Stockholders* being dissatisfied with this decision

of the Supreme Court, and anxious to have the management of the Institution in their own hands, and under their own immediate control, proceeded, shortly after this decision, to Harrisburg, to have the necessary alteration made to put the Institution into their possession.

On the 16th of June, 1836, at an EXTRA session of the Legislature, an act was passed, which provided that the 4th article of the 3d section of an Act entitled "An Act to re-charter certain banks," passed on the 25th of March, 1824, (which fixes the scale of voting at elections for Directors in reference to the number of shares of stockholders,) should be extended to the Philadelphia Savings Institution; and that thereafter, *Stockholders* should be eligible for *Directors*, and that the election for Directors should take place on the second Monday in January annually.

The *Members* of the Institution were utterly unaware of any such movement being made by the *Stockholders*, and were perfectly astonished at the information of the alteration. They believed then, as they believe now, that the Legislature, after having granted and guaranteed certain rights and privileges, by an act of incorporation, to particular individuals, named in the act as *members*, would not, and could not, make any alteration, or in any manner interfere with the *vested rights* thus conferred, without the request or approbation of the corporators.

There was but one instance on record of such a proceeding known to them; and that was the case of the University of Pennsylvania. To this case they would beg to call your attention for a few moments, in order that you may the more clearly see the precise similarity of that case and the one now before you. Although the case of the University is an old one, yet the principles which governed the Legislature in deciding that, are still a good precedent, and, we trust, will still be adhered to and acted upon.

The case of the University was brought before the Legislature in 1779, which then consisted of a single Assembly or Chamber. "It was alleged that the Trustees had, by a certain resolution, adopted in the year 1764, fifteen years previously, departed from the plan of the founders, and narrowed the foundation of the Institution, (such were the words of the charge,) the doors of which

had been open, both for teachers and pupils, to all the varieties of the Christian faith." Nothing could be farther from truth than this allegation. The Trustees had resolved and did continue the administration of their affairs on the broadest basis of liberality, and nothing was, or it is believed, could be shown to the contrary.

On the 27th of September, 1779, an act was passed which *annulled the Charter* granted by the proprietaries, and *transferred* the property and possession of 'the College and Academy' to a *new institution* established by the same act, and styled 'the University of Pennsylvania:' enacted that the rights and powers of the existing Trustees should cease, and the privileges and franchises be transferred to the new corporation.

This was the *first*, and is (with the exception of our own Institution,) the *only* instance in which the Legislature of Pennsylvania has ventured to abrogate a charter, or interfere with vested rights. Now let us see what followed this unrighteous proceeding.

"On the 6th of March, 1789, the Legislature of Pennsylvania enacted another law, which, after reciting a provision in the constitution of the State, for the encouragement and protection of religious, literary, and charitable corporations, and enumerating the charters granted by the proprietaries to the Institution, and reciting also," (the very words of the act are here used,) "that whereas, by the act of the 27th day of September, 1779, the said trustees and corporators, and also the provost, vice provost, professors, and all other masters, teachers, ministers, and officers of the said college, academy, and charitable school, were, *without trial by jury, legal process, or proof of misuses or forfeitures, deprived of their said chartered franchises and estates*, and the said board of trustees and faculty were declared to be dissolved," &c. &c., "*all which is repugnant to justice, a violation of the Constitution of this Commonwealth, and dangerous in its precedent to all incorporated bodies, and to the rights and franchises thereof*" —proceeded *to repeal* so much of the act of 1779 as was repugnant to the charters, and *restored to the College and Academy all*

the estates, possessions and rights which had been transferred to the new Institution."

Thus, we see, though justice was slow in coming to the relief of the University, yet it was sure and certain, and gave a severe reprimand to those who had been guilty of the wrong. It taught the Legislature of 1779 the danger and folly of interfering with chartered rights.

In the case of the Philadelphia Savings Institution, the *Members,* not without murmuring at the injustice of the alteration, submitted patiently to the act of the Legislature, and gave the possession of the Institution, together with their chartered rights and privileges, to the *Stockholders.* When they did so they felt assured that when the nature of the case was properly stated to the Legislature, it would be ready, prompt and willing to redress the wrong it had committed, and restore the *members* to their original footing. Nor were they mistaken in their opinion. As soon as it was satisfactorily ascertained that the alteration to the Charter was *in opposition to the wishes of the corporators,* the Legislature was quick to relieve the *Members* of their disfranchisement, and place them in the position the Charter required them to maintain.

On the 3d of April, 1837, during the REGULAR session of the succeeding Legislature, *ten months* afterwards, the law in relation to the *Stockholders was repealed* by a resolution of the legislature; and it was declared that the Institution should elect their directors on the first Monday in May, then next, and on the first Monday in every May thereafter annually. Thus restoring the Charter to its original form, and reinstating the *Members* in their lawful privileges.

What was the conduct of the *Stockholders,* then in possession of the Institution, on the information being communicated to them that the *members* were reinstated? Did they do as the *members* did on a former occasion, relinquish their possession? Did they evince a dispos tion to abide by the Laws of the Land? Or did they treat the law with contempt, and laugh at and scorn the *Members* when they demanded their *lawful rights?* Let their conduct answer.

By the Charter, and by the construction put upon it by the Supreme Court, the *Members* have a right "to provide for the admission of *Members*, and furnishing proofs of such admission."

The *board of Directors elected by the Stockholders*, regardless of the Charter and the decision of the Supreme Court, enacted a by-law in terms following—that is to say Law 4 :—

"The *directors*, in accordance with the power *to them* given by the charter to provide for the admission of *members*, and furnishing proofs of such admission, *do declare*, that every *person holding one share of Stock*, shall be a *member* of said institution, and that upon a *transfer of such stock, such person shall cease to be a MEMBER.*"

This by-law, passed in direct violation of the charter, and clearly in the face of the construction put upon it by the Supreme Court, at March Term, 1836, was intended, and, in fact, actually did, *disfranchise and expel all the original incorporated members who held no Stock in the Institution*, and made *corporators of those who not only NEVER before had been* CORPORATORS, *but who were never*, by the Legislature, *contemplated as corporators.* Ejecting the only legal and constitutional *members* and putting *themselves*, contrary to law, in the possession of that to which they had not even an equitable title. Thus placing the Institution under the direction of those whom the Law never intended should have the control of it; and whom the highest legal tribunal in the State, had, in express words, and in language that could not be misinterpreted, declared had *no right* to interfere with, or attempt to govern it. This by-law, if suffered to remain in force, would have overruled, and made a nullity of the decision of the Supreme Court, and of the act of Incorporation. It would have caused the names of *members*, made so by the Law, to be erased from the roll, and deprived of their privileges, without any alleged offence, except that of not being STOCKHOLDERS!—a qualification not required by the law. It was a by-law passed by a body illegally constituted, and without authority to enforce it.

Under this By-Law, all *Stockholders* were made, as they contended, *members* under the *original charter*, and as such entitled to all the rights and privileges of *original members.* Thinking, by this method, to repeal the law, they continued to hold pos-

session, nor would they surrender the rights they had usurped until compelled by a decision of the Supreme Court, at December Term, 1837. Thus did they, in opposition to the Law, to Justice, to Equity, and to every *manly* sense of honor and honesty, continue in the illegal and unauthorised possession of the Institution for a period of *Ten months* after the law had decided in favor of the MEMBERS. Thus holding *illegal possession* for the term of *TWENTY months.*

The Case was brought before the Supreme Court on a *quo warranto*, to December Term, 1837, and on the 10th of February, 1838, the Court delivered an *unanimous* opinion in favor of the rights of the *Members*, and ordered them to be *immediately* re-instated in their franchises. The Case is reported in full in 3d Wharton's Reps. 228, and a copy from said Report is annexed to this Statement for the information of the Legislature.

Judge Rogers, in giving the opinion of the Court, in page 247, and remarking on the conduct of the *Stockholders*, whilst holding illegal possession, says :—"By a series of resolutions, more remarkable for *ingenuity* than for any thing else, the *Stockholders* have acquired, and will continue to exercise, without check or control, the exclusive management of the corporation, which they may, if they are so disposed, *convert into an instrument to promote their own pecuniary interests, at the expense of the depositors*, for whose benefit alone, the Institution was created."

Again, in page 249, speaking in reference to By-laws Nos. 4 and 32 of the *Stockholders* he says, "Applying by-laws Nos. 4 and 32 to these tests, it is plain that they are VOID. As has been before observed, this is not a *monied institution*, but in the nature of *a charity*, intended for the benefit of depositors. The Legislature have said, *in language which cannot be mistaken*, THAT STOCKHOLDERS, as such, *are not entitled* to paticipate in its management. They have confided that trust to the *original members*, and such as might be afterwards chosen. They have also thought proper (the wisdom of which cannot be denied,) to impose an important check on the directors, vesting in the body at large. With a full knowledge of all this, the respondents, *who were elected by the Stockholders* under a law

(*which was soon afterwards repealed*) and who themselves are *Stockholders*, and not *members*, have *by one sweeping resolution*, obtained, and seek to retain the entire control of the institution. The by-laws admit at once, all the *Stockholders* (of course including themselves) to all the rights, benefits and privileges of *members*, in subversion, of the fundamental principles, and contrary to the spirit and provision of the charter. The election is made without regard to the qualification of the individual to perform the trust, and to carry into effect the object of the charter but for the single purpose so far as appears, of having the government of the Company, by means of others who are identified in interest and feeling with themselves. The case itself is an illustration of the wisdom of the rules before stated. As well might they have admitted any other class of persons, the butchers, tailors, or shoemakers, as a body, or indeed any free white male inhabitant of the City and County of Philadelphia; and in some respects such a by-law would be more reasonable. They would at least have *no particular pecuniary interest* to subserve, as they would stand strictly impartial between the conflicting interests of the *Stockholders* and *depositors;* whereas *Stockholders* may have an interest *in opposition to the depositors*, of which the Legislature was well aware and from the influence of which they will in vain have attempted to guard the depositors if the construction for which the respondents contend should prevail."

"The foregoing is a correct and faithful statement of the facts connected with the institution from its incorporation to the present time. Another question under the New Constitution may arise as to the constitutionality of making any alteration without 6 months previous public notice.

Sec. 25 of Art. 1 says :—" No corporate body shall hereafter be CREATED, renewed or extended with banking, or discounting privileges, without 6 months' previous public notice of the application for the same in such manner as shall be prescribed by law, etc."

By the act of incorporation of the Philadelphia Savings Institution, certain franchises and privileges are conferred on the *per-*

sons therein named, and certain trusts reposed in them. If the *Stockholders* succeed, which we think impossible under all the circumstances, in their application there will *a new body corporate be CREATED* and the old one cease to exist. The new constitution says, "*no corporate body* shall be hereafter CREATED, etc." without a specified notice. That notice has not been given, nor has any law yet specified the manner in which such notice shall be given.

The Institution is now prospering under its present management and no dissatisfaction is exhibited or expressed except by a few discontented *Stockholders.* The *members* appeal, with confidence, to the Legislature to guard and protect them in the rights and immunities which, on former occasions, they granted them. It has been justly remarked, "there is an abiding sense of justice in all christian communities which will not suffer wrong to be triumphant for any considerable period, but is sure to work out ample redress for the injured, and ample atonement for the public wrong. Party zeal and discipline may force their way through the barriers both of the constitution and moral rights, and the leaders may enjoy a short lived triumph; but they may live to find themselves placed on the record of their country's history with no enviable notoriety, and to witness the restoration to their rights of those whom they would have dispoiled or proscribed."

In conclusion, the *Members* have only to say they *desire no alteration or amendment.* They are satisfied with the Charter as granted them by the Legislature. It is too late, at this time of day, for *Stockholders* to complain, they did not know the terms of the Charter: they thought they were entitled to all the *priviliges of members* when they bought stock, etc. They were *not compelled to buy the Stock.* They thought it a *profitable* investment, or they would not have placed their funds there. The charter was before them, and its contents known to them. If they have committed an error, it is an error of their own seeking.

The *Members* have complied with all the provisions of the charter, and are anxious to continue as they have been. The decisions of the Supreme Court, annexed, they would recommend to the particular attention and consideration of the Legislature, being well assured, that they will have the proper and due weight on the minds of all. Again we repeat we ask for *no*

hange, and being those incorporated in the charter, *as members*, *'e* feel confident the Legislature will allow of *no varying of its eatures or principles against the wishes and in opposition to the xpressed will of the Corporators.*

Philadelphia, January 9, 1839.

'ETER FRITZ.
N. C. RUDMAN.
WILLIAM NEWBOLD.
GEO. P. LITTLE.
ROBERT SCOT.
JOHN S. WARNER.
JOHN M. BURNS.
ELLIS CLARK.
JOSEPH L. DUTTON.
JOSEPH FEINOUR, JR.
JOSEPH AKENS.
THOMAS FLETCHER.
THOMAS HAYES.
JOHN P. BINN[illegible]
CHARLES BARRINGTON.
HENRY HUBER, JR.
CHARLES JOHNSON.
MORGAN ASH.
THOS. T. ASH.
MATTHIAS PLEIS.
BENJAMIN DUNCAN.
CHARLES H. ROGERS.
ARCHIBALD ROBERTSON.
SAMUEL ECKSTEIN.
P. I. DECKER.
C. ALEXANDER.
WM. KNEASS.

IN THE

SUPREME COURT

OF THE

STATE OF PENNSYLVANIA.

Philadelphia, April 28, 1836.

CASE OF THE PHILADELPHIA SAVINGS INSTITUTION.

At the last term, an application was made by Mr. Norris for a rule to show cause why an information in the nature of a writ of quo warranto should not be filed, to enquire by what authority Joseph Feinour and others exercised the right of members of the Philadelphia Savings Institution.

At the same time a rule was granted upon the President and Directors of the same Institution, to show cause why a mandamus should not issue, requiring them to admit William C. Bridges to participate in the transactions of the said Institution, at its meetings of business.

Upon the return of these rules, the following appeared to be the material circumstances:

The Philadelphia Savings Institution was incorporated by an act of the Legislature of Pennsylvania, passed on the 5th day of April, 1834.

The first section declared that certain persons therein named, (forty-six in number) "and all and every other person or persons, hereafter becoming members of the Philadelphia Savings Institution, in the manner hereinafter mentioned," should be created and made a corporation and body politic, with the usual powers and capacities.

The 2d, 3d, and 4th sections, were as follows:

Section 2. The object of this corporation shall be to receive from time to time, and at all times, from all persons disposed to entrust them therewith, such funds as may be deposited with them, and for which they shall pay to the depositors such rates of interest as may be from time to time agreed upon by the Directors of the said Institution. Provided that the said rates of interest shall not be reduced without giving at least sixty days'

notice of their intention so to do, in two or more of the daily papers of the city of Philadelphia.

Section 3. For the security of the depositors of the said Institution, it shall be the duty of the persons named in the first section, and of their associates, to raise and form a capital for the said Institution, of not less than fifty thousand dollars, nor more than $200,000, in shares of $25 each; which capital shall be at all times liable to the depositors for the amount of their deposites and of the interest accruing thereon. The said shares shall be transferable on the books of the company in such manner as may be designated by the By Laws of the said Institution.

Section 4. There shall be a meeting of the members of the said Philadelphia Savings Institution, on such day in the month of May next, and at such place as the five persons first named in this act, or any three of them shall appoint, and give at least ten days' notice of such meeting in two or more newspapers printed in the city of Philadelphia, and such day in the month of May, and at such place annually thereafter as the By-Laws of said Institution shall provide, for the purpose of choosing from among the members, thirteen Directors to manage the affairs of the said Institution, for twelve months thereafter, and until a new election shall take place—and the five persons first named shall be judges of the first election of directors, and the judges of all future elections shall be appointed, and notice of such elections given in such manner as the By Laws shall provide.

The 5th section declared the duties and powers of the directors; among which it was provided, that they should have power "to provide for the admission of members, and furnishing proofs of such admission," and to pass all such By Laws as should be necessary to the exercise of their powers and of the other powers vested in the corporation by the charter: "Provided, that all such By-Laws as shall be made by the directors, may be altered or repealed by two thirds of the members, at any annual meeting, or at any general meeting, called in pursuance of any By Law made for that purpose; and the majority of members may at any annual or general meeting, pass by laws which shall be binding upon the directors."

The 6th section authorised the corporation to invest its funds

in public stocks of the state, or of the United States, or in real securities, or in the discount of notes and personal securities: provided that the rate of discount should not exceed one half per cent for 30 days.

The 7th section as follows:

Section 7. It shall be the duty of the directors, at least once in every six months, to appoint, from the members in the said corporation, five competent persons as a committee of examination, whose duty it shall be to investigate the affairs of the said corporation, and to make and publish a report in one or more newspapers printed in the city of Philadelphta—and it shall also be the duty of the directors, on the first Monday of January and July, in each and every year, to make and declare a dividend of the interest and profits of the said corporation, after paying its expenses, and the same to pay over to the stockholders, or their legal representatives, within ten days thereafter."

The 8th section provided, that nothing in the act contained should be so construed as to give or extend any banking privileges to the Institution or to give or allow any compensation to the directors thereof.

Shortly after the act of incorporation, the directors adopted certain by laws, among which were the following:

Law 4. Any member of the Institution, may, by writing addressed to the Treasurer, resign and relinquish his place and right as a member of the Institution; and every member who shall cease to be a stockholder, shall at the same time cease to be a member.

Law 5. No person shall be eligible as a member, unless he shall have been a depositor one year, or a stockholder six months. All elections for membership shall be by ballot at a general meeting of the Institution, at which the votes of two thirds of the whole number of members of the Institution shall be requisite for admission.

At a general meeting held on the 5th January, 1836, the old by laws were repealed by the members, and in lieu of the above laws, viz. law 4th and 5th, they passed the following by laws.

Law 3, *Section* 3. The number of members of the Institution shall be limited to fifty; and in case of vacancy by death, resignation or otherwise, it shall be the duty of the president imme-

diately to call a general meeting of the Institution to supply such vacancy, and at any election of members a majority of the whole number of the members shall be present; and the person or persons balloted for, shall have received the votes of at least two thirds of the members present.

Provided that no person shall be elected a member who shall not have been nominated at some meeting previous to that, at which he shall be balloted for.

Section 4. Any member of the Institution may, by writing addressed to the president, resign and relinquish his place and right as a member of the Institution, at any general meeting of the members."

The law, No. 5, above quoted, was repealed.

The board of directors afterwards, viz. on the 14th January 1836, passed the following by law, being a repeal of and in substitution of by law 4 above:

"*Law* 4. Any member of the institution may, by writing addressed to the president, resign and relinquish his place and right as a member of the institution at any general meeting of the members."

The questions submitted to the Court were,

1. Whether persons originally members, who had transferred their stock and no longer possessed any interest in the stock, continued to be members, with the right of voting for directors, etc.

2. Whether a person to whom stock in the Institution was assigned as upon purchase—became a member, ipso facto, without admission by the directors.

Mr. James S. Smith and Mr. Sergeant contended, that none but persons having a pecuniary interest in the corporation by holding stock, were to be considered as members. The rule is that in monied institutions an interest in the stock is essential to membership. The rule is founded in good sense, which leads men to trust the care of their property to persons having a common interest with themselves. In the case of literary, charitable, or religious institutions a general interest is sufficient. Where the corporation is of a mixed character, the principles as to monied institutions ought to govern; since the control of the stock ought not to be in the hands of persons having no interest in it.

Such are the turnpike and bridge companies and others, in which there is a view to the public good and private advantage. These principles will be found in the text-writers and adjudications. Angel & Ames on Corporations, 62, 77, 238, 240, Gray *v.* Portland Bank, (3 Mass. Rep. 364.) State *v.* Tudor, (5 Day's Rep. 333.) Bond *v.* Appleton (8 Mass. Rep. 472.) What then is the character of this corporation? It is obvious, that it is not a charitable institution merely. It differs from the saving banks of England, and the saving fund societies established here, in the essential feature of possessing a joint stock fund created by the subscriptions of members not depositors, and upon which a dividend is annually made. The object of those societies is to take care of the money of depositors, and to pay them the highest rate of interest that can be made after deducting expenses. They are not allowed to discount notes; and their investments being upon real estate or public stocks, they require no collateral capital stock as security. The savings institutions, on the contrary, look to the interests of the stockholders, and endeavour to give as much profit as possible to the latter. Whenever a capital is made up by contributions, and is to return a profit, it is a joint stock, no matter what the public object may be. There are many passages of this charter, which seem to imply, that the legislature meant stockholders only when "members" are spoken of, and if there are others, which seem to import a contrary intention, the principles stated with reference to joint stock companies, ought to have weight in deciding between them.

Mr. W. M. Meredith and Mr. Broom contra.

The rules of law which have been referred to on the other side apply only where the charter is silent. Here there is a distinction expressly between stockholders and members. The 1st, 4th, 5th, and 7th sections afford evidences of this intention. There were necessarily members, before there were any stockholders. The provision for future members is, that the directors may admit them; not that every stockholder might make as many members as he had shares to assign. The power to the directors to admit members is necessarily an exclusive one. The only mention of stockholders is in the 7th section, where a dividend is provided for. If the stockholders alone, were to be considered members, it might follow that the greater part of the

profits would be appropriated to them, to the prejudice of the depositors. The legislature probably intended that a check should exist upon this power. This is not a monied corporation, in the sense in which that term is commonly used. The primary object is the security and benefit of the depositors. The creation of the capital stock is stated in the act to be for the security of the depositors. Upon the principle relied upon on the other side, the depositors ought to have control of the institution. The by law made by the directors, confining membership to stockholders, was beyond their power; besides it has been repealed by the members in the manner authorised by the act of assembly.

The following cases were cited: Sergeant *v.* The Franklin Ins. Co. (8 Picker. 90.) Quiner *v.* Marblehead Ins. Co. (10 Mass. Rep. 484, (note.) 5 Mod. 259. Angel & Ames 244.

The opinion of the Court was delivered by

Rogers J.—The rules obtained in this case, involve two questions, which depend upon the construction of the act of 5th of April 1834, incorporating the Philadelphia Savings Institution.

1. Is a stockholder, a member of the corporation, and as such entitled to participate in its business?

2. Does he cease to be a member when he ceases to be a stockholder?

In relation to the power of admitting members of a corporation, as is said in Angel and Ames on Corporations 62, reference must often be had to the provisions and spirit of the charter; and when the charter is silent, we must look to the provisions of the common law, and to the particular nature and purpose of the corporation. In certain corporations, (such for example, as religious, charitable, and literary,) the number of members is often limited by charter; and whenever there is a vacancy, it is usually filled by a vote of the company. As regards trading and joint stock operations, no vote of admission is requisite; for any person who owns stock therein, either by original subscription or by conveyance, is in general entitled to, and cannot be refused the rights and privileges of a member. Gray *v.* Portland, (3 Mass. R. 364. King *v.* Bank of England, Doug. 524.) In monied institutions, such as banks, insurance, canal, and turnpike companies, etc., the mere owning of shares in the stock of the corporation, gives a right of voting; and a stockholder ceases to be a member by a transfer

of stock. There is then this marked distinction arising from the nature of the corporation. In the one case, a pecuniary interest is the evidence of membership; whilst the affairs of religious, charitable or literary institutions, are committed to those who have no pecuniary interest whatever in their management. If this were a corporation of the former description, it would greatly strengthen the argument of the respondent's counsel, but I cannot view it in that light, but look upon this and all institutions of a like kind, as partaking of the nature of a charity, where the professed object is to advance the interests of the poor and helpless. The object of this institution is declared to be, to receive from time to time, from all persons disposed to entrust them therewith, such funds as may be deposited with them, and for which they are to pay to the depositors such rates of interest, as may be from time to time agreed upon by the directors. These deposits, as is well known, are made in small sums by the poor; and the institution is professed to be more especially for their benefit. In aid of this object, and as subsidiary to it, the legislature in the third section directs, that for the security of the depositors, etc., it shall be the duty of the persons before named and of their associates, to raise a capital, etc., of not less than $200,000, in shares of $25 each; which capital is to be at all times liable to the depositors for the amount of their deposits and the interest.

In other institutions of the like kind, the latter provisions are omitted: they were manifestly introduced into this charter, not for the benefit of the stockholders, but an additional security or pledge of the depositors. As an inducement to make this investment, in the sixth section, the corporation is authorised to invest its funds "in public stocks of this state, or the United States, or real securities, or in the discount of notes and personal securities;" and in the seventh section, the directors are authorised to declare a dividend of the interest and profits of the corporation after paying its expenses, and to pay it over to the stockholders, or their legal representatives. It seems to me, most clear, that the legislature had no intention of establishing a joint stock company, but that there was a mere modification or change in the provisions usually inserted in the charters of savings fund institutions.

But at any rate, these rules of construction only apply when the charter is silent. So that in this, as in every other case, we

must look to the act itself, having regard to the particular nature and purpose of the corporation. In the charter there are antagonist interests; the interest of the stockholders is in some measure in opposition to the interest of the depositors. It is for the benefit of the one to decrease, and the other to increase, the rate of interest on deposits; and hence, there may be a peculiar propriety in the legislature to entrust the control of the funds to persons who have no pecuniary interest in the corporation. At least I perceive nothing in this, of which the stockholders have any right to complain. If the stockholders have the exclusive management of the institution, for which the respondents contend, a temptation is held out to divert the institution from its original and primary object, and convert it into a bank, differing only in fact, that it is a bank of discount and deposit, and not of circulation. Besides, if a pecuniary interest is the only criterion of membership, it may with equal plausibility be said, that the depositors are members also, and as such entitled to participate in its management. In the first section it is enacted "that the persons therein named, and all and every other person or persons, hereafter becoming members of the Philadelphia Savings Institution, in the manner hereinafter mentioned, shall be, and are hereby created and made a corporation by the name and style of the Philadelphia Savings Institution." The manner in which they can become members, is pointed out in the fifth section. Among other matters, the directors have power to provide for the admission of members and furnishing proofs of such admission. This we conceive to be inconsistent with the idea, that a stockholder is, ipso facto, a member of the corporation; for if so, why confer the power to provide for the admission of members? The legislature do not confine the power to furnishing proofs of the admission of members, but they in express words, grant the power to admit members of the corporation. This we conceive to be an authority to elect such persons as members, as they may deem best fitted to carry into effect the objects of the charter. The respondent's case also derives additional strength from the seventh section. A distinction is there taken between a member of the corporation, and a stockholder. It is made the duty of the directors to appoint from the members of the corporation, five competent persons as a committee of examination to

investigate the affairs of the corporation; and in the same section, to declare a dividend, etc., and to pay the same over to the stockholders, or their legal representatives. Why, it has been asked this change of phraseology, if a stockholder, as such, is a member of the corporation? It is also worthy of remark, that the legislature wholly omit to regulate the right of voting, a regulation always introduced in all joint stock incorporations. It is the uniform policy to limit the number of votes to which the stockholders may be entitled, in all such companies; a limitation which would not have been omitted, had the legislature conceived this to be an institution of that description.

Reliance has been placed on the word "associates" in the third section, which the counsel for the Commonwealth says must refer to stockholders. This is an argument not without plausibility. This section makes it the duty of the persons named in the act, and of their associates, to raise a capital of not less than $200,000; but in what manner this is to be effected, is left to their discretion. It would seem to be the intention of the legislature to give power to admit members before as well as after the capital was raised; and indeed they might have required the aid of others than those named, to effect this result. I see nothing in the act which forbids this; but I think a fair construction of this part of the charter, shows that this power was intended to be given. If so, this is an argument to show that a monied interest, is not an indispensable condition of membership.

It is said, that the directors have passed a by law, that every member who shall cease to be a stockholder, shall cease to be a member. Whether this be so or not, is of little importance; for although the charter give authority to the directors to admit members, there is none given to disfranchise them. A by law may modify and change the constitution of a corporation, but cannot alter it. It may regulate in a reasonable manner, the exercise of a right in the internal affairs of a corporation, in the conduct of its members, or the mode by which a person is admitted to the exercise of a right to which he has an inchoate title; but it cannot take away a right, or impose any unreasonable restraint in the exercise of it. 2 Kyd on Corporations, 107, 122.

RULES DISCHARGED.

IN THE

SUPREME COURT

OF THE

STATE OF PENNSYLVANIA.

Philadelphia, February 10, 1838.

THE COMMONWEALTH AGAINST GILL AND OTHERS.

A writ of quo warranto was issued at this term, by leave of the Court, against William Gill and others, at the relation of Peter Fritz, and others, upon the following suggestion, filed.

"In the Supreme Court for the Eastern District of Pennsylvania, of December Term, 1837.

City and County of Philadelphia, ss.

Be it remembered, that Peter Fritz, Benjamin Duncan, Henry Huber, Jr., Thomas Fletcher, John M. Burns, Thomas P. Roberts, Morgan Ash, John S. Warner, Charles Johnson, Jr., Thomas T. Ash, Samuel Eckstein, Joseph S. Dutton, and William C. Rudman, who sue for the Commonwealth in this behalf, come here into Court, and give the Court here to understand and be informed, that, by an act of Assembly, duly passed and approved, the fifth day of April, A. D. 1834, entitled "An Act to Incorporate the Philadelphia Savings Institution," the relators, together with certain other persons named in the said act, and all and every other person or persons hereafter becoming members of the Philadelphia Savings Institution, in the manner thereinafter mentioned, were created and made a corporation and body politic, with the name and style of the Philadelphia Savings Institution, with the franchises, privileges, and incidents of a corporation; and it was provided, that thirteen directors should be annually chosen and elected from among the members of the said corporation, by the members thereof, to manage the affairs of the said corporation, all which in and by the said act of Assembly, reference thereunto being had, will more fully and at large appear; and the relators annex hereto a copy of the said act of assembly, and pray

that the same may be taken as a part of this suggestion and information, as if it were herein fully recited and set forth at large. And the relators further give the Court here to understand and be informed, that the members of the said corporation afterwards, viz: on the thirtieth day of June, A. D. 1834, at the county aforesaid, at a general meeting of the members thereof, duly convened and held, duly passed and enacted certain by-laws of the said corporation, one of which by-laws is in the words following, viz:—"Law 5. No person shall be eligible as a member until he shall have been a depositor one year, or a stockholder six months All elections for membership shall be by ballot, at a general meeting of the institution, at which the votes of two-thirds of the whole number of the members of the institution shall be requisite for admission:" which said recited by-law remains in full force and unrepealed.

And the members of the said corporation, afterwards, to wit, on the thirty-first day of January, A. D. 1836, at the county aforesaid, at a general meeting of the members thereof, duly convened and held, duly passed and enacted certain other by-laws of the said corporation, one of which last mentioned by-laws is in the words following, viz:—"Law 5. Any person may be eligible as a member of this institution, who may have been a stockholder six months, or a weekly depositor for one year. Candidates for membership shall be balloted for at the next general meeting after being nominated:"—which said last recited by-law remains in full force and unrepealed.

And the relators further give the Court here to understand and be informed, that William Gill, Samuel Chew, George J. Pepper, Abraham Hart, James Musgrave, Jr., John Leadbeater, Sr., William Sharpe, Edward D. Wolfe, George Guest, and Benjamin F. Hagner, nor any of them, were not originally, nor have not at any time been elected or admitted members o the said corporation. And the relators further give the court here to understand and be informed, that at a meeting of the members of the said corporation, duly held on Monday, the first day of May, A. D. 1837, (agreeably to the charter and by-laws thereof, and to the provisions of a joint resolution, passed by the Senate and House

of Representatives, and approved by the Governor of the Commonwealth, on the third day of April, A. D. 1837, by which it was enacted, among other things, that the directors of the said corporation should be elected on the first Monday in May then next, and on the first Monday in every May thereafter annually): the relators were by the members thereof duly chosen and elected directors, to manage the affairs of the said institution for twelve months thereafter, until a new election shall take place. But notwithstanding the premises, and the said election, the said William Gill, Samuel Chew, George J. Pepper, Abraham Hart, James Musgrave, Jr., John Leadbeater, Sr., William Sharpe, Edward D. Wolfe, George Guest, and Benjamin F. Hagner, have during all the time since the first day of May, A. D. 1837, used, and still do use, the franchises, offices, privileges and liberties of the directors of the said Philadelphia Savings Institution, and, during the said time have usurped and do usurp upon the Commonwealth therein, to the great damage and prejudice of the constitution and laws thereof. Whereupon the said relators for the said Commonwealth do make suggestion and complaint of the premises, and pray due process of law against the said William Gill, Samuel Chew, George J. Pepper, Abraham Hart, James Musgrave, Jr., John Leadbeater, Sr., William Sharpe, Edward D. Wolfe, George Guest, and Benjamin F. Hagner, in this behalf, to be made to answer to the said Commonwealth, by what warrant they claim to have and enjoy the franchises, offices, liberties, and privileges aforesaid.

December 26, 1837.

A similar writ was issued against the same and other persons, to show why they claimed to be members of the Philadelphia Savings Institution.

The act of incorporation referred to in the foregoing suggestion, was passed the fifth of April, 1834. The following provisions are all that are material to the understanding of the present case.

The first section enacted that certain persons therein named, and all persons thereafter becoming members of the Philadelphia Savings Institution, should have the powers and privileges of

a body politic and corporate. The second section declared that the object of the corporation was to receive deposits of mone y and to pay interest thereon. The third section provided, that for the security of the depositors, a certain capital should be raised, to be divided into shares, which were to be transferable on the books of the company, in such manner as should be directed by the by-laws. The fourth section provided for a meeting of the members annually, on such day in the month of May, as by the by-laws should direct, to choose from among the members thirteen directors, to manage the affairs of the institution for twelve months, and until a new election should take place. The fifth section declared the powers of the directors, which among other things, were expressed to be, "to provide for the admission of members, and furnishing proofs of such admission;" to make by-laws, &c.; provided that such by-laws might be altered or repealed by two-thirds of the members, at any annual meeting, or at any general meeting called in pursuance of any by-law made for that purpose, and that the majority of members might, at any annual or general meeting, pass by-laws which should be binding on the directors. The seventh section made it the duty of the directors, at least once in every six months, to appoint from the members of the corporation, five competent persons as a committee of examination, whose duty it should be to investigate the affairs of the corporation, etc.

On an information in the nature of a quo warranto, granted by this Court at March Term, 1836, it was held, 1st, that Stockholders were not, as such, Members of the corporation, and consequently that the assignee of a Stockholder did not, by the assignment, become a member; and 2d. That persons originally members, continued to be such, although they never possessed stock, or had parted with it.

An act of the legislature, passed shortly after this decision, viz. on the 16th of June, 1836, provided that the fourth article of the third section of an act entitled "An Act to recharter certain banks," passed on the 25th of March, 1824, (which fixes the scale of voting at elections for directors in reference to the number of shares of Stockholders,) should be extended to the Philadelphia

Savings Institution; and that thereafter Stockholders should be eligible for directors, and the election for directors should take place on the second Monday in January, annually.

On the 3d of April, 1837, the foregoing provision was repealed by a resolution of the legislature; and it was declared that the company should elect their directors on the first Monday in May then next, and on the first Monday in every May thereafter annually.

The defendants in the writ of quo warranto, excepting B. F. Hagner, filed the following answer on the 8th of January, 1838.

"To the Honorable the Judges of the Supreme Court of the State of Pennsylvania, for the Eastern District. The answer of William Gill, Samuel Chew, George J. Pepper, Abraham Hart, James Musgrave, Jr., John Leadbeater, Sr., William Sharpe, and Erasmus D. Wolfe, to the suggestion and complaint of Peter Fritz, Benjamin Duncan, Henry Huber, Jr., Thomas Fletcher, John M. Burns, Thomas P. Roberts, Morgan Ash, John S. Warner, Charles Johnson, Jr., Thomas T. Ash, Samuel Eckstein, Joseph S. Dutton, and William C. Rudman, or to so much thereof as they are advised, that it is in any manner incumbent on them to answer--respectfully makes known,—

That they admit that Peter Fritz and others, in the first section of the act of the 5th April, 1834, incorporating the Philadelphia Savings Institution named, and all and every person or persons thereafter becoming members of the Philadelphia Savings Institution, in the manner thereinafter mentioned, were truly created and made a corporation and body politic, by the name and style of the Philadelphia Savings Institution, with all the rights, privileges, liabilities, and immunities, in the said section enumerated. The respondents further show, that by the fourth section of the said act, the election for thirteen directors to manage the affairs of the said institution for twelve months thereafter, was prescribed to take place from among the members, on such day in the month of May, then next ensuing, and at such place annually thereafter, as the by-laws of the said institution should provide; the directors so elected to manage the affairs of the institution for

twelve months thereafter, and until a new election should take place.

And by the fifth section of the said act, the directors for the time being, or a majority of them, should have power, among other things, to provide for the admission of members, and furnishing proof of such admission, to provide for paying all necessary expenses, conducting the affairs of the corporation, and generally to pass all such by-laws as shall be necessary to the exercise of the said powers, and of the other powers vested in the said corporation by the said charter, and the said by-laws from time to time to alter and repeal. Provided that all such by-laws as shall be made by the directors, may be altered or repealed by two-thirds of the members, at any annual meeting, or at any general meeting called in pursuance of any by-law made for that purpose.

And the majority of the members may, at any annual or general meeting, pass by-laws, which shall be binding on the directors.

The respondents further show, that at a meeting of the board of the directors, held May 5, 1834, it was provided, that no person should be eligible as a member unless he should have been a depositor one year, or a stockholder six months; all elections for membership to be by ballot, at a general meeting of the institution, at which the votes of two-thirds of the whole number should be requisite for admission.

That by an act passed June 16th, 1836, (pamp. 681,) it was enacted, that the fourth article of the third section of an act entitled "An Act to recharter certain banks," passed the 25th day of March, 1824, directing the mode of voting for directors, should be extended to the Philadelphia Savings Institution, and that thereafter, stockholders should be eligible for directors.

That in pursuance of the said last mentioned act, the respondents were on the 9th day of January, 1837, duly elected directors of the Philadelphia Savings Institution, and were entitled to all the rights, privileges, franchises, and offices of directors, as provided by the charter acts of incorporation, supplements and by-laws of the said institution.

That on the 6th of February, 1837, in obedience to, and in pur-

suance of the said act of the 5th of April, 1834, and of the said act of the 16th of June, 1836, the respondents enacted a by-law in terms following,—that is to say, Law 4:—

"The directors, in accordance with the power given them by the charter, to provide for the admission of members, and furnishing proofs of such admission, do declare, that every person holding one share of stock, shall be a member of said institution, and that upon a transfer of such stock, such person shall cease to be a member."

That at a meeting of the board of directors duly convened on the 20th of April, 1837, the following resolution was submitted:

"Resolved, That all the by-laws of the institution passed prior to the 1st of February, 1837, which have not been heretofore legally repealed, be, and the same are hereby repealed." And on motion duly seconded, it was ordered, "That this resolution be laid over to the next meeting, and notice be given to the absent members," which was given accordingly. "And further resolved, that so much of the following by-laws as have not been heretofore legally enacted, be, and the same are hereby enacted, as the by-laws of the institution."

Wherein was included:

Law 3. "The directors, in accordance with the powers to them given by the charter, to provide for the admission of members, and furnishing proofs of such admission, do declare that every person holding one share of stock, shall be a member of the said institution." And

Law 32. "The proofs of admission of members, shall be furnished by their appearing to be stockholders on the books of the institution."

And that the said resolutions and by-laws, afterwards at a regular meeting of the board of directors, duly held and convened on the 24th of April, 1837, the said resolutions inter alia, were unanimously adopted, and by-laws passed previous to the 6th of February, 1837, which had not been legally repealed, were thereby repealed, and the code of laws passed February 6, 1837, was confirmed and re-enacted.

And the respondents admit that a resolution was passed on the

night of the third April, 1837, marked No. 22, entitled, "A resolution relative to removing the Schuylkill Bank at Port Carbon, to Pottsville," as follows, to wit:—

"Resolved, That the tenth section of the act to authorize John Gamber, of Dauphin County, to construct a canal or ship, from the Pennsylvania Canal to his furnace, and for other purposes, passed the 16th June, 1836, be, and the same is hereby repealed."

"And that the company in the said section mentioned, shall elect their directors on the first Monday in May next, and on the first Monday in every May thereafter annually." And the respondents show that at a meeting of the board of directors, duly convened and held on the 28th of April, 1837, it was duly resolved that all stockholders now holding one or more shares, are declared to be members of the institution, and entitled to all the benefits of the by-laws of the institution.

That on the 1st of May, 1837, the respondents (together with Charles Robb and Samuel Curtis,) were duly elected directors for twelve months, to manage the affairs of the institution, and as such entered upon and held and hold the offices, franchises, rights and privileges as directors of the same. And the respondents further show, that at a meeting of the board of Directors duly convened and held on the 2d of May, 1837, it was duly resolved that in case the said election should prove to have been irregular and illegal, then in obedience to the fourth section of the charter, they continue to hold and exercise their offices, by virtue of their election in January preceding.

And the respondents do not admit, but on the contrary expressly deny, that the said by-laws so as aforesaid passed by the directors nor any of them, were at any time in due form of law altered or repealed by the members; and they do not admit, but on the contrary expressly deny, that the members of the said corporation, one the day of June or any time in June 1834, at a general meeting of the members thereof, duly convened and held, passed and enacted the by-law five, in the said suggestion and resolution set forth. And they do not admit, but on the contrary expressly deny, that the members of the said corporation, on the day of January, 1836, or at any time in January 1836,

at a general meeting of the members thereof, duly convened and held, passed and enacted the by-law in the said suggestion and relation, recited and set forth law fifth, in the words or to the tenor or effect in the said suggestion or relation set forth. And they do not atmit, but on the contrary expressly deny, that at a meeting of the members of the said corporation, duly held on Monday the 1st of May, 1837, the relators of any of them were by the members thereof duly chosen and elected directors to manage the affairs of the said institution; but the respondents aver that they were at an election duly held on Monday, May 1st, 1837, elected directed directors of the said institution, to manage the affairs thereof, twelve months thereafter, or until a new election should take place; without this, and there is any other matter or thing in the said suggestion and relation contained, which these respondents are required by law to answer, admit or deny."

Benjamin F. Hagner, on the same day filed the following disclaimer:

"*To the Honorable the Judges of the Supreme Court of Pennsylvania.*

The answer of Benjamin F. Hagner to the suggestion and relation of Peter Fritz and others, respectfully shows,

That he has not at any time exercised any of the office or privileges of a director of the Philadelphia Savings Institution."

To the answer of the first named defendants, the following demurrer was filed:

"And the said relators, who for the said commonwealth prosecute, having heard the said answer of the said defendants, by them in manner and form aforesaid above pleaded, say, that the said Commonwealth, by anything by them respectively above alleged, ought not to be barred from having the aforesaid suggestion and information against them, because the said relators say, that the said answer and the matters therein contained are not sufficient in law to bar the said Commonwealth from having the aforesaid suggestion and information maintained against them, and to which said answer and the matters therein contained, they, the said relators, have no occasion, nor are they bound by the law of the land to answer; and this the said relators are ready to

verify; wherefore for want of a sufficient plea in this behalf the said relators pray judgment; and that the said defendants, and every of them, be respectively convicted of the premises above complained of against them; and that they and every of them be respectively ousted, of and from the franchises, offices, privileges, and liberties aforesaid."

The following causes of demurrer were assigned:

"1st. Duplicity and uncertainty in the answer, in pleading and relying upon the two alleged elections of the 9th of January and 1st of May, 1837.

"2d. That the answer traverses the times of making the two by-laws mentioned in the suggestion.

"3d. That the answer is multifarious, &c. in other respects."

Mr. J. R. Ingersoll, for the defendants, now applied for leave to amend, by withdrawing the answer, and filing a plea in lieu of it. He said that the amendment was offered at the earliest possible time after notice of the demurrer. The informality of the answer was admitted. The act of 1806 requires the Court to allow amendments in all stages of the pleading; and the act applies to cases of quo warranto, as well as to other actions.

Mr. Meredith, Contra.—This is an action of substance. In England these proceedings are amendable, because the statute extends expressly to quo warranto. Willcock on Corporations, vol. 2, pl. 272. The Courts there require an affidavit that the bad pleading arose from error, and was not intended for delay. Id, pl. 503. The act of 1806 does not apply, because at the time of its passage these proceedings were not in the nature of civil suits. By the act of 1836, regulating proceedings upon quo warranto, the method of proceeding is the same, whether it is at the suit of an individual, or of the Commonwealth. Amendments must be allowed in both cases, or not at all. It would be very inconvenient in the case of a corporation holding annual elections, if it were allowable, on the eve of an argument, to withdraw one plea or answer, and substitute another.

Curia.—We think that the amendment should be allowed in this case. There is no affectation of delay apparent. This is in the nature of a civil proceeding; and whether the act of 1806

applies, or not, which may be considered doubtful, we have the power to authorise amendments in pleadings, which we are always disposed to exercise in furtherance of substantial justice.

Leave to amend having been granted, the following plea was filed:

And the said William Gill, Samuel Chew, George J. Pepper, Abraham Hart, James Musgrave, jr., John Leadbeater, sr., William Sharpe, and E. D. Wolfe, come into Court, protesting that the suggestion aforesaid is not sufficient in law, and that they are not under necessity by the laws of the land to answer thereto; for a plea, they nevertheless say that, on the ninth day of January, one thousand eight hundred and thirty-seven, they were duly elected and chosen directors of the Philadelphia Savings Institution, agreeably to the original charter granted by the act of assembly of the Commonwealth of Pennsylvania, dated the fifth day of April, one thousand eight hundred and thirty-four, and to the provisions of the tenth section of the act of assembly passed the sixteenth day of June, one thousand eight hundred and thirty-six, entitled an act authorising John Gamber, of Dauphin county, to construct a canal or slip from the Pennsylvania Canal to his furnace, and for other purposes; (of which several acts of assembly true copies are hereto annexed for greater certainty, and to them the said respondents refer, and pray that they may be severally received as parts of this their plea;) and the said respondents thereby became and were entitled to all the rights, privileges, franchises, and offices of directors of the said corporation. And the respondents further say, that on the first day of May, one thousand eight hundred and thirty-seven, they, the said respondents, were again duly elected and chosen directors of the said corporation, by the members thereof, convened for that purpose, agreeably to the provisions of a resolution of the general Assembly of the Commonwealth of Pennsylvania, passed on the night of the 3d of April, 1837, entitled "a resolution relative to removing the Schuylkill Bank at Port Carbon to Pottsville," and to resolutions of the said corporation, passed at meetings of the directors thereof, duly convened and held on the 20th, 24th, and 28th days of April, 1837, (of which resolutions copies are, for

greater certainty, hereto annexed, to which the respondents refer, and pray that they may be received as a part of this their plea,) and on the 2d day of May, 1837, at a meeting of the directors of the said corporation, duly convened and held, it was resolved, that in case the said last named election should prove to have been irregular and illegal, then, in obedience to the fourth section of the charter of incorporation, the persons so elected continue to hold and exercise their offices by virtue of their election in January preceding. And the respondents aver, that they were, on and before the 1st day of January, 1837, and have so continued to be, stockholders; and on and before the 1st day of May, 1837, they were, and have so continued to be, members of the said Philadelphia Savings Institution, agreeably to the acts of assembly and by-laws aforesaid; and since the said elections, respectively, they, the said respondents, have used, during all the said time, and still use, the liberties, franchises, offices, and privileges of directors of the said corporation, as they well might, and still may, without this—that the said respondents have usurped, or now usurp, the said franchises, offices, liberties, and privileges of the said corporation, in manner and form as, by the suggestion aforesaid, is supposed—all which they are ready to verify.

And the said respondents expressly deny that the members of the said corporation at the time or times stated in the said suggestion, or at any other time or times whatever, at a general meeting of the members thereof, duly convened and held, passed and enacted certain by-laws of the said corporation, as set forth in the said suggestion, and termed respectively, "Law 5." And the respondents expressly deny that any such by-laws in substance or in letter are in force or existence as by-laws, regulations, enactments, or resolutions, of the said corporation. On the contrary, the said respondents aver, that on the sixth day of February, 1837, certain by-laws were enacted by the directors of the said corporation, in pursuance of the authority vested in them by law, whereof a true copy is hereto annexed, (which the respondents refer to, and pray may be received as part of this their plea,) among which by-laws is law 4. Whereby it is provided that every person holding one share of stock shall be a member of the said institution, and that upon a transfer of such stock,

such person shall cease to be a member. And at a meeting of the said directors duly held and convened on the twenty-fourth day of April, 1837, the said code of laws passed on the sixth day of February, 1837, was confirmed and re-enacted, and the by-laws which were passed previously to the sixth of February, 1837, and had not been legally repealed, were then repealed agreeably to the resolutions and enactments, of which copies are hereto annexed, to which the respondents refer, and pray that they may be received as parts of this their plea. Which several by-laws are inconsistent with, and contradictory to the alleged by-law "5," stated by the relators to have been duly passed and enacted, and to remain in full force and unrepealed, and the respondents aver that the by-laws so by them stated to have been enacted by the directors, are and remain in full force and virtue, unaltered and unrepealed. All which, the said respondents are ready to verify.

Whereupon the said respondents pray judgment that all and singular the liberties, franchises, privileges, and offices of, as aforesaid of, directors of the Philadelphia Savings Institution, may be allowed and adjudged to them, and that they the said respondents may be dismissed from this court.

The following by-laws and proceedings were annexed to this plea:

"By-Law No. 32.—The proof of the admission of members shall be furnished by their appearing to be stockholders on the books of the institution.

"Law No. 33.—The books of the transfer of stock shall be closed fifteen days immediately preceding each of the days appointed for balancing the general accounts of the institution, and declaring the half yearly dividend, and they shall also be closed ten days previous to the annual election in May, to enable the treasurer to furnish the judges of the election with an alphabetical list of the members of the institution.

Law No. 34.—The election of directors shall be held annually on the first Monday in May, at the office of the institution, and shall open at ten o'clock A. M., and close at three o'clock P. M.

The judges of the election shall be appointed by the board of directors for the time being; and at least ten days' notice shall

be given of such election in one or more newspapers of the city of Philadelphia. The judges of the election shall forthwith count the votes and declare the persons elected. The secretary shal without delay give them notice thereof, and the directors so elected shall assemble at the office of the institution as soon as convenient and elect a president."

April 20th, 1837.

Board convened. Present Messrs. Robb, Pepper, Musgrave, Sharpe, Curtis, South, Gill and Chew.

Mr. Chew submitted the following resolution:

Resolved, That all the by laws of this institution passed prior to the first day of February 1837, which have not been heretofore legally repealed, be and the same are hereby repealed.

On motion, ordered, that this resolution be laid over to the next meeting, and notice given to absent members. Adopted.

Mr. Chew submitted the following resolution:

Resolved, That so much of the following by laws as have not been heretofore legally enacted, be, and the same are hereby enacted as the by laws of this institution.

Which was on motion, laid on the table till the next meeting of the board.

On motion, adjourned.

April 24th, 1837.

Board convened. Present Messrs. Robb, Chew, South, Gill, Pepper, Musgrave, Sharpe, Curtis, Wolfe and Hart.

They proceeded to the consideration of the first resolution offered by Mr. Chew at the last meeting, viz:

Resolved, That all the by laws passed prior to the first of February 1837, which have not been heretofore legally repealed, be, and the same are hereby repealed.

And, on motion, the resolution was unanimously adopted.

The board then proceeded to the consideration of the second resolution submitted by Mr. Chew at the last meeting, viz:

Resolved, That so much of the following by laws, as have not been heretofore legally enacted, be, and the same are hereby enacted as the by laws of this institution.

And the same having been discussed was unanimously adopted.

Adjourned.

South and Hart.

Mr. Chew offered the following resolution, which was unanimously adopted.

Resolved, That all Stockholders now holding one or more shares, are declared to be members of the institution, and entitled to all the benefits of the by-laws of the institution.

On motion, adjourned.

The relators demurred at bar to this plea, assigning for causes of demurrer, the same reasons already given. (See anteps. 238.)

Mr. Meredith for the relators.—One of the defendants, (Mr. Hagner,) has filed a disclaimer; but upon the authorities we are entitled to a judgment against him. Cokes entries, 527, b. 2, Wilcocks on Corporations, 499, etc.

1. The cause of demurrer is, that the plea is double. The respondents set up two inconsistent titles to the offices they hold. In Rex v. Powell, (8 Mod. 180,) a plea of right by prescription, and also by charter, was held to be inconsistent and bad. So also, are the cases of Rex v. Weymouth, (7 Mod. 374; S. C. 4 Bro. Parl. Cas. 464.) Rex v. Seigh (4 Burr. 2143.) Rex v. Grimes (4 Burr. 2147.) Symmers v. Regem (Cowper 506.) Here the respondents claim, first, under the election of May, 1837, and then under the fourth section of the charter.

2. The respondents aver merely that they were "duly elected" directors, without setting out the manner of election, which is necessary, according to the decisions. 3 Seviz, 293. The King v. Birch [4 Term Rep. 610.] Rex v. Hill [4 Barn. & Cress. 443.] This objection applies to their claim to act as directors.

3. Then as to their claim to be members. This depends upon the decision of the question, whether, by reason of being stockholders they are also members; in other words, whether the by-law No. 4, by which every person holding one share of stock was made a member, was a good by-law. By the original charter, the control of the institution was with the members alone, and such was the construction given to it by this court. [1 Wharton Rep. 368.] The act of 16th of June, 1836, certainly did not proprio vigore, make the stockholders members; and this must have been the opinion of the respondents when they passed this by-law. It has been decided that the 2d clause of this by-law is in-

valid; and the rule is, that if part of a by-law is invalid, the whole is so. Case of the Taylors of Ipswich, [11 Rep. 54, a.] Norris v. Stapps, [Hob. 211.] Dodwell v. Oxford, [2 Ventris, 34.] Guilford v. Clark, [Id. 248]. This by-law is also bad, because it violates the constitution of the Society. Rex v. Spencer [3 Burr. 1827.] Rex v. Cutbush [4 Burr. 2204.] The King v. Ginever, [6 Term Rep. 733.] Angell on Corporations, 177, 199.

Mr. Chew and Mr. J. R. Ingersoll for the defendants.—There can be no judgment against one who disclaims. Rex v. Williams, [1 Strange. 677.] Commonwealth v. Murray [11 Serg. & Rawle, 74.] The King v. Trevenen, [2 Barnw. & Ald. 339.] Bullers N. P. 210.

1. The general rule as to duplicity in pleading, is, that the plea is bad where two distinct inconsistent defences are set up. Many circumstances, however, may be alleged, which together form but one plea. [Popham 186.] Mere surplusage in a plea, will not vitiate. [1 Sid. 135.] Here if one election be established, the averment of the other is surplusage Sawyne v. Vaughan, [Moore 297]. The respondents do not say that they hold under the elections of January and May. The resolution of the directors is in the alternative. The averment is a mere relation of necessary incidents.

2. It is alleged that the manner of the election is not sufficiently set forth. This is purely a technical objection. It is not necessary to aver more than the nature of the right by which the election was held; as by charter or prescription. The record would be grievously burdened if the particulars of every election were to be detailed. The cases cited on the other side do not support the objection.

3. A by-law is not necessarily bad altogether, because it may be so in part. In 1 Strange, 467, it is said, "No doubt a by-law may be good in part and void as to the rest." The true rule is laid down in 2 Kyd on Corporations, 155, and Angell, 199, that if a by-law be entire, and part be bad, the whole is void; but if it consist of several particulars, it is the same as several by-laws, though thrown into one.

4. The question whether these stockholders have the right to membership, seems to be settled by the opinion of the Court, in

1 Wharton's Rep. 467, 468, where Judge Rogers says, that the legislature has granted to the directors power to elect such persons as members as they may deem best fitted to carry into effect the objects of the charter. By the 5th section of the charter, the directors acquired this power, which was necessary to the existence of the corporation. The act of 1836 in effect, made all the stockholders members, and such was plainly the intention. The rights acquired under that act were not invalidated by the resolution of the legislature of April, 1837. It required an election to be held in May, but not retrospectively affect the election of January 1837. The by-law No. 4 disfranchised no one; it merely created new members, and specified the terms on which they should continue such. There is nothing in the charter or in the general law of corporations, to prevent the election of fifty or one hundred members at once.

Mr. Meredith in reply.—It is laid down in the books, that upon a disclaimer judgment is to be entered for the King, [Angell, 499.] It has been argued that the relators must recover on the strength of their own title. The proceeding, however, is on the part of the Commonwealth, and therefore the reverse is the rule. Hagner's answer is in effect a disclaimer. If it is not it is bad, as it amounts merely to the plea of non usurpavit.

The plea of the defendants relies on both the elections. The respondents were only called to answer why they held the offices, &c., since the first of May, 1837. The objection, therefore is substantial. The manner of the election is also material. The object of the writ is by its terms, to ascertain by what right they hold; and it requires some explanation of the method by which they were "duly elected." The Charter requires thirteen directors, whereas eleven only are shown to be elected.

The act of 1836 merely gave a right of voting to the stockholders. If it made them members, so much the worse for them, since it is repealed, and it is admitted that all powers created by it cease to exist. The by-laws made in pursuance of it, of course will fall with it. The by-law is repugnant to the principles of the charter, since it makes the stockholders, where stock was pledged for the security of the deposites, holders of their own pledges. The power of electing members is given by the charter to the

corporation at large; and a by-law taking it away from them would be bad. The 5th section relates merely to the manner of electing members. It does not give the directors power to elect. But supposing them to possess the power, is a sweeping admission of a large body of persons, a valid exercise of the power? It clearly is not, since the act of admission must be deliberate, and implies choice and discrimination.

The opinion of the Court was delivered by

Rojers, J.—This is a writ of quo warranto, issued by leave of Court, at the suggestion of Peter Fritz et al., commanding William Gill and others, to show by what authority they exercise the franchises, offices, privileges and liberties of directors of the Philadelphia Savings Institution; and in the latter case by what authority they claim to be members of the institution. The respondents have filed a plea in bar, to which the relators have demurred specially.

The case, as it appears from the pleadings, is this: On the 5th of April, 1834, the legislature incorporated the Philadelphia Savings Institution. In the first section, the persons therein named, viz. Peter Fritz and others, and all and every person and persons thereafter becoming members of the institution, are created a corporation by the name and style of the Philadelphia Savings Institution. By the fifth section, the directors have power to provide for the admission of members, and furnishing proofs of such admission. The act also provides for the meeting of the members, and choosing thirteen directors from among them, to manage the affairs of the institution. This act received a judicial construction at the March term, 1836, when among other things it was resolved, 1st. That stockholders were not, as such, members of the corporation; and 2d. that persons originally members, continued to be such, although they never possessed stock or had parted with it. After this decision, viz: on the 16th June, 1836, the legislature enacted, that the third section of the 4th article of an act, entitled an act to re-charter certain banks, which directs the mode of voting for directors to be extended to this institution, and that therefore stockholders shall be eligible for directors, and that every depositor of six months standing shall be entitled to

one vote for every one hundred dollars he or she shall have in the institution. And it also provides that the election for directors shall be held on the second Monday in January next and annually thereafter. This act gave the stockholders and depositors the right of voting, and the former the privilege of being elected directors, a right which they did not enjoy under the original charter; but still the legislature were careful not to make them members of the company.

By the 7th Section, an important duty is assigned to the members; for by that section, the directors are required at least once in every six months to appoint from the members five competent persons as a committee of examination, to investigate the affairs of the corporation, and to make publication of the state of the institution. With the exceptions of those specific changes, the charter remains as before. By the authority of this act, on the 9th of January, 1837, the respondents in the first quo warranto were elected directors; and on the 6th of February, the same year, they passed the by-laws Nos. 4 and 32, that every person holding one share of stock, shall be a member of the institution, and upon a transfer of such stock, such person shall cease to be a member, and that the proof of the admission of members shall be furnished by their appearing on the books to be stockholders. Various other by-laws were passed, viz. by-laws Nos. 33, 34, and the by-laws adopted the 28th April, 1837, referred to in the pleas in bar, but which is immaterial particularly to notice. On the 3d of April, 1837, the legislature repealed the 10th section of the act before referred to, and further enacted that the company shall elect the directors on the first Monday in May, and the first Monday in every May thereafter annually. The respondents aver, that on the 9th of January, 1837, they were duly elected and chosen directors, agreeebly to the original charter, and to the provisions of the 10th section of the act of 16th of June, 1836; and that the respondents thereby became, and were entitled to all the rights etc. of directors. They also aver that on the first day of May, 1837, (the time fixed for the election of directors by the repealing act of the 3d April, 1837,) they were again duly elected and chosen directors by the members of the institution, agreea-

bly to the resolution of the 3d April, 1837, etc., and to the resolutions of the corporation, passed at the meetings of the directors duly convened and held, on the 20th, 24th, and 28th April, etc. And they further aver that on the 2d May, 1837, at a meeting of the directors, it was resolved, that in case the said last mentioned election should prove to have been irregular and illegal, then, in obedience to the 4th section of the charter, the persons so elected continue to hold and exercise their offices by virtue of the election in the January preceding. They also aver that they were on or before the first day of January, 1837, and have so continued to be members of the institution, agreeably to the acts of assembly and by-laws aforesaid; and since the said elections, respectively they have used during the said time, and still use, the liberties, franchises, etc.

To the pleas in bar, the relators have filed special demurrers, and have assigned for causes of demurrer—

1st. In alleging generally that the respondents were duly elected, without setting out specially the manner of their election.

2d. Duplicity and uncertainty in pleading, in relying on the two alleged elections, of the 9th January and 1st May, 1837.

And 3dly. The relators contend that the directors had no power under the charter to admit members, but that their authority extended merely to provide for their admission. That if they had the power, the by-laws Nos. 4 and 32 were an improper and unreasonable exercise of that power, contrary to the fundamental principles of the charter, and therefore void.

As to the first objection.

The respondents cannot in general aver, that they were duly elected directors; and if the plea contained nothing more than this general averment, it would be bad. The case of Rex v. Seigh, [1 Burr. 2144,] is full to this point. But the respondents in addition, set out the times and places of the election, and aver that the first election was held in pursuance of the authority granted by the original charter, and to the provisions of the 10th section of the act before referred to, copies whereof they annexed and made parts of their plea. It was open to the relators to demur or take issue on the fact, whether the election had been in

conformity to the charter, without being exposed to the difficulty suggested in the King v. Birch, [4 T. R. 619,] of not knowing on what fact to go down to trial. The respondents allege that the election was held at a particular time, and aver the authority under which it was held; and this, we think, makes the plea certain to a common intent, which is all the law requires in a plea in bar. Com. Dig. title Pleading, E. 7, C. 17. I Saund. 49 N. 1 Chitty, 513.

Then as to the second objection, viz. duplicity and uncertainty in pleading, in relying upon the alleged elections of the 9th January and 1st May, 1837.

At the common law it was a general rule, equally affecting declarations, pleas, replications, etc., that the pleading must not be double, that is, that no single count or plea should state two or more facts, either of which would of itself, independently of the other, constitute a sufficient ground of action or defence; a rule founded on the principle that it would be unnecessary and vexatious to put the opposite party to litigate and prove two points, when one would be sufficient to establish the matter in issue. Every plea must, in general, be single; and if it contains two matters, either of which would bar the action and require several answers, it will be subject to a special demurrer for duplicity. And in an information, in the nature of a writ of quo warranto, the respondents cannot rely on two titles, but they are put to their election under which of them they will defend themselves. Rex v. Seigh, [4 Burr. 2146.] Rex v. Grimes and Rex v. Blatchford, [4 Burr. 2147.]

Whether the respondents would have the right to rely on two titles or distinct pleas, under the statutes 4 and 5 Anne, ch. 16, and 9 Anne, ch. 20, sect. 7, which extends the former to all writs of mandamus, and informations in the nature of a writ of quo warranto, it is unnecessary to determine. It would seem, however, those acts in Rex v. Newland, and Rex v. Briscoe, (2 Burr. 2147,] have been so construed as not to give liberty to plead more pleas than one, even with leave of the Court. The statute of Anne, allowing double pleas does not appear to aid a duplicity in one and the same plea, though it allows of different grounds of defence

being stated in different pleas, with the exception that the pleas must not be entirely inconsistent, an exception which has been somewhat relaxed.

These principles are in effect conceded, but the respondents seek to avoid their application, by the allegation that all the facts in the plea constitute but one title; that they rely upon the election of the 1st of May, 1837; and that the other averments are but inducements, or at least surplusage, which the Court will disregard. It is undoubtedly true that the defendants are not precluded from introducing several matters into their plea, if they be constituent parts of the same entire defence, and form one connected proposition, or be alleged as inducement to, or as a consequence of, another fact. But the facts stated in the plea are neither constituent parts of the same entire defence, nor do they form one connected proposition; nor can they properly be said to be inducements to, or the consequence of another fact. The plea takes two grounds, either of which, independent of the other, would constitute a valid defence. If the election of the 1st of May, 1837, was an election in conformity to the charter, it would be a bar to the writ, or if that election was illegal, and the election of the January preceding good, that would be a defence; for the charter expressly provides that the directors chosen to manage the affairs of the institution, shall continue in office for twelve months, and until a new election takes place. The respondents rely upon two titles. 1st. Upon the election held on the 1st of May, 1837, when, as they allege, they were duly elected and chosen directors of the corporation, agreeably to the provisions of a resolution passed the 3d of April, 1837, entitled, etc., and to a resolution of the company passed at meetings of the directors, etc., held on the 20th, 24th, and 28th days of April, 1837; and 2d. On the resolution of the 2d May, 1837, and on the averment, that on that day, at a meeting of the directors, duly held, it was resolved, that in case the said last mentioned election should prove to have been irregular, then in obedience to the 4th section of the charter, etc., the persons so elected continue to hold and exercise their offices by virtue of the election in the January preceding. It is impossible to understand this part of the plea, otherwise than an assertion of title, by virtue of the election of the 9th of Janua-

ry, in the event of the last election being declared void. And this, we believe, was so understood and intended by the pleadings.

The third, last, and most important objection remains to be disposed of. It relates to the claim of the authority, by the directors to admit members, and the validity of certain by-laws, particularly Nos. 4 and 32, passed by the directors. The relators deny that the directors have the right to admit members, but they insist that the authority is confined to providing for their admission. They also contend that the by-laws Nos. 4 and 32, by whomsoever passed, were an unreasonable exercise of power, contrary to the fundamental principles of the charter, and therefore void.

The by-laws are in the following words. By-law No. 4. "The directors, in accordance with the powers to them given by the charter, to provide for the admission of members, and furnishing proofs of such admission, do declare that every person holding one share of stock, shall be a member of the said institution; and that upon a transfer of such stock, such person shall cease to be a member."

By-law No. 33.—"The proof of admission of members shall be furnished by their appearing to be stockholders, on the books of the institution."

It cannot be reasonably doubted, that it was the intention of the legislature, so far as it could be legally done, to replace the institution, by the repealing act, in the same situation it was under the original charter. In 1 Wharton, 461, it was held, that this corporation was not a moneyed institution, that it partook of the nature of a charity; that it was principally intended for the benefit of the depositors. As a means to effect this principal object and design of the charter, a capital was raised, as a pledge for the security of the money deposited. That there were three classes of persons referred to in the charter; members who may or may not have a pecuniary interest in the institution; stockholders and depositors. That the members alone had the direction and management of the company; and that the second and third class could neither vote, nor were they eligible as such, as directors. If, then, we give the charter the construction for which the respondents contend, it is manifest that we defeat the obvious intention of the legislature. By a series of resolutions more re-

markable for ingenuity than for any thing else, the stockholders have acquired, and will continue to exercise, without check or control, the exclusive management of the corporation, which they may, if they are so disposed, convert into an instrument to promote their own pecuniary interests at the expense of the depositors, for whose benefit alone the institution was created.

These respondents base their right on that part of the charter which authorises the directors to provide for the admission of members. They must rest on the power given by the charter before the passage of the act of the 3d of April. The tenth section of that act confers no new power which bears on this point. It provides merely, under certain regulations, that, stockholders and depositors may vote, and that the former, as such, may be elected directors.

The question divides itself into two parts. Have the directors a right to admit members? and if they have, are the by-laws Nos. 4 and 32, a proper and legitimate exercise of the right? We are of the opinion that the respondents have failed in both particulars.

In the first section of the charter, Peter Fritz and others, naming them, and all and every other person or persons afterwards becoming members, in the manner mentioned, are created a corporation and body politic, by the name and style of the Philadelphia Savings Institution, and by that name have succession; and they have generally the power to do every other act or thing necessary to carry into effect the provisions of the act, and to promote the object and design of the corporation. Under that section, without more, the members would have power to admit other members; for the power of electing both officers and members, is an incident to every corporation. It is not necessary that such a power should be expressly conferred by the charter. If the power is not expressly lodged in other hands, it must be exercised by the company at large. But this power of election may, by the charter, be taken from the body at large, and reposed in a body of directors, or any other select body. Whether this has been done, either expressly or by necessary implication is the question; and to determine this point reference must be had to the provisions and spirit of the charter. It is contended that the legislature have manifested the intention of taking this

from the corporate body at large, and confiding it to a select body in the fifth section. In delivering the judgment of the Court in the former case, I certainly expressed an opinion to that effect, but this was not the point of the case, nor was it necessary to its correct decision. On a subsequent and more attentive examination, I am convinced I was in error. The power to admit members is vested in the body at large in the 1st Section; and I cannot perceive that it is either expressly, or by necessary implication, taken away in the fifth. The directors have authority to provide for the admission of members; that is, to prescribe the time, place and manner of holding the election, (on all of which the charter is silent); an exemplification of which is given in several by-laws, made by the respondents and incorporated in their special plea. In the preceding part of the section, the legislature have expressly conferred the power on the directors, to elect a president from their own body, to appoint such officers and agents as they shall deem necessary to conduct the business of the institution, and to pay them compensation. This is the only express power given; for in the remaining part of the section, the phraseology is certainly different. They have the power only to provide for the manner in which certain specific duties, enumerated, shall be performed. But besides, in the absence of an express injunction, we cannot give it the construction for which the respondents contend, as it would tend to disappoint the general intention and design of the charter, which was evidently framed with the view to an efficient control over the directors, vested in the body at large, which would be effectually prevented, if the directors could admit whom they pleased as members.

But granting the power, was this a proper exercise of it? The by-laws of a corporation must not be inconsistent with its charter. The charter is the fundamental law of the corporation; and as is said in Angell and Ames, on corporations, 188, is in its terms and spirit as a constitution to the petty legislation of the body acting by and under it; and hence all by-laws in contradiction of it are void. In Rex v. Spencer, [3 Burr, 1838] it is said that the true test of all by-laws is the intention of the Crown in granting the charter, and the apparent good of the corporation. In the same case it is said by Mr. Justice Wilmot, that corporations cannot make by-laws contrary to their constitution. If they do, they

act without authority. The power of making by-laws, in whomsoever it may reside, is in trust for the benefit of the whole, and must be exercised with discretion. Hence by-laws must be reasonable, and all those which are nugatory, vexatious and oppressive, or manifestly detrimental to the interest of the corporation, are void. In relation to the authority to admit members, reference must be had to the provisions and spirit of the charter; and when the charter is silent, we must look to the rules of the common law, and to the particular nature and purpose of the corporation. Of exemplifications of these principles the books are full, as is shown in the authorities cited at the bar. Applying by-laws Nos. 4 and 32 to these tests, it is plain that they are void. As has been observed, this is not a moneyed institution, but in the nature of a charity, intended for the benefit of depositors. The legislature have said, in language which cannot be mistaken, that stockholders, as such, are not entitled to participate in its management. They have confided that trust to the original members, and such as might be afterwards chosen. They have also thought proper (the wisdom of which cannot be denied,) to impose an important check on the directors resting in the body at large. With a full knowledge of all this, the respondents who were elected by the stockholders under a law, (which was soon afterwards repealed,) and who themselves are stockholders, and not members, have by one sweeping resolution, obtained, and seek to retain, the entire control of the institution. The by-laws admit at once all the stockholders (of course including themselves,) to all the rights, benefits and privileges of the members, in subversion of the fundamental principles, and contrary to the spirit and provisions of the charter. The election is made without regard to the qualification of the individual to perform the trust, and to carry into effect the object of the charter, but for the single purpose, so far as appears, of having the government of the company, by means of others who are identified in interest and feeling wth themselves. The case itself is an illustration of the wisdom of the rules before stated. As well might they have admitted any other class of persons, the butchers, tailors, or shoemakers, as a body, or indeed any free white male inhabitant of the city and county of Philadelphia; and in some respects such

a by-law would be more reasonable. They would at least have no particular pecuniary interest to subserve, as they would stand strictly impartial, between the conflicting interests of the stockholders and depositors; whereas stockholders may have an interest in opposition to the depositors, of which the legislature was well aware, and from the influence of which they will in vain have attempted to guard the depositors if the construction for which the respondents contend should prevail. The Court is also of opinion, that in a disclaimer, by a defendant, the commonwealth is entitled to judgment. 2 Kyd on Corporations, 407. Angell and Ames, 500. Co. Entries, 27, b.

JUDGMENT OF OUSTER.